

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CHEMUNG

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**DONNA OPPEDISANO AND  
KATHLEEN ISRAEL,**

Plaintiffs,

**SUMMONS**

-VS-

**Index No.:**

**JURY TRIAL DEMANDED**

**ROMAN CATHOLIC DIOCESE OF ROCHESTER,  
PARISH OF THE MOST HOLY NAME OF JESUS,  
ST. MARY CHURCH IN ELMIRA, NEW YORK,  
FR. THOMAS CORBETT, Individually and in his  
capacity as a Roman Catholic Priest in the Diocese  
of Rochester, FR. JOHN LEARY, Pastor of St. Mary's  
Church, Elmira, NY, Individually and in his  
capacity as a Roman Catholic Priest in the Diocese of Rochester,  
BISHOP JOSEPH LLOYD HOGAN, Individually and in his capacity  
as a Roman Catholic Priest in the Diocese of Rochester,  
and BISHOP EMERITUS MATTHEW HARVEY  
CLARK, Individually and in his capacity as a Roman  
Catholic Priest in the Diocese of Rochester,**

Defendants.

=====

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York).

**IF YOU FAIL TO APPEAR OR ANSWER**, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 23, 2019

**JARROD W. SMITH, ESQ., P.L.L.C.**

*JW Smith*

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CHEMUNG

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**DONNA OPPEDISANO AND  
KATHLEEN ISRAEL,**

Plaintiffs,

**COMPLAINT**

-VS-

Index No.:

**ROMAN CATHOLIC DIOCESE OF ROCHESTER,  
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CLARK, Individually and in his capacity as a Roman  
Catholic Priest in the Diocese of Rochester**

Defendants.

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Plaintiffs, **DONNA OPPEDISANO and KATHLEEN ISRAEL**, by and through their attorney, Jarrod W. Smith, Esq., Of Counsel to Jarrod W. Smith, Esq., P.L.L.C., does hereby complain of the Defendants, **ROMAN CATHOLIC DIOCESE OF ROCHESTER, PARISH OF THE MOST HOLY NAME OF JESUS, ST. MARY CHURCH IN ELMIRA, NEW YORK, FR. THOMAS CORBETT, Individually and in his capacity as a Roman Catholic Priest in the Diocese of Rochester, FR. JOHN LEARY, Pastor of St. Mary's Church, Elmira, NY, Individually and in his capacity as a Roman Catholic Priest in the Diocese of Rochester, BISHOP JOSEPH LLOYD HOGAN, Individually and in his capacity as a**

**Roman Catholic Priest in the Diocese of Rochester, and BISHOP EMERITUS MATTHEW HARVEY CLARK, Individually and in his capacity as a Roman Catholic Priest in the Diocese of Rochester, and does state the following:**

1. The Plaintiff, Donna Oppedisano, resides in the County of Onondaga, State of New York. At the time of the sexual assault by Defendant Corbett he was a priest at St. Mary Church in Elmira, New York. Plaintiff was a resident of Elmira, New York and parishioner of St. Mary Church when she was 12-13 years old. Her sister is Kathleen Israel.

2. The Plaintiff, Kathleen Israel, resides in the State of Texas. At the time of the sexual assault by Defendant Corbett he was a priest at St. Mary Church in Elmira, New York. Plaintiff was a resident of Elmira, New York and parishner of St. Mary Church when she was 11 years old. Her sister is Donna Oppedisano.

3. The Defendant, Roman Catholic Diocese of Rochester's central office is located at 1150 Buffalo Road, Rochester, New York 14624.

4. The Defendant, Fr. Thomas Corbett, upon information and belief, resides in Rochester, New York, County of Monroe, State of New York; and was employed by the Defendant Diocese; and was the assistant pastor at St. Mary Church in Elmira, New York from 1972 to 1977.

5. The Defendant, Fr. John Leary, upon information and belief, resides in Rochester, New York, County of Monroe, State of New York; and was employed by the Defendant Diocese; and was the pastor at St. Mary Church in Elmira, New York from 1972 to 1977.

6. The Defendant, Bishop Joseph Lloyd Hogan, upon information and belief, resides in Rochester, New York, County of Monroe, State of New York; and was employed by the Defendant Diocese and Bishop of the Defendant Diocese from 1969 to 1978.

7. The Defendant, Bishop Emeritus Matthew Harvey Clark, upon information and belief, resides in Rochester, New York, County of Monroe, State of New York; and was employed by the Defendant Diocese and Bishop of the Defendant Diocese from 1969 to 1978.

8. This complaint seeks money damages from the Defendants for severe injuries that the Plaintiffs suffered by the Defendants; and more specifically by Defendant Corbett and others of the conspiracy. In addition, money damages are sought for negligence, gross negligence, recklessness and carelessness, assault and battery, sexual assault and abuse, false imprisonment, conspiracy to commit child sexual assault, intimidation, aiding and abetting, intentional infliction of emotional distress, and negligent intentional infliction emotional distress of the Plaintiffs.

### **FACTS OF THE CASE**

#### **Plaintiff, Donna Oppedisano facts:**

9. At the age of 12-13 years old, Plaintiff was a very active member of the youth group, school and church community. Plaintiff participated in community work, in CYO sports. Plaintiff also cleaned the rectory and church (at which times Plaintiff was all alone in the church and rectory) at St. Mary's Church in Elmira, NY.

10. For 2.5 - 3 years during that time (1972-1974), Defendant Thomas Corbett, serving as assistant pastor at St. Mary's sexually assaulted Plaintiff within the church and gym/parish center across the street. Defendant Corbett cornered Plaintiff in the staircases, in the

gym, in his office, and in the back of the church. Defendant Corbett pushed Plaintiff up against the wall and put his hands up her shirt to fondle her breasts and put his hands on her genitals. Defendant Corbett would said things like "doesn't this feel good"? and made sexually inappropriate comments about how Plaintiff's breasts were growing and how they looked. This only ended when Plaintiff's family moved to Syracuse in 1974.

11. Plaintiff did not tell anyone because she tried to tell herself it was not happening and that it was not a big deal, and that Plaintiff could just avoid him, but also because her parents were his friends and devout Catholics and Plaintiff did not want to burden them nor did she want anyone to know because Plaintiff was so ashamed. So Plaintiff never told anyone until she was in her late 20's.

12. When Plaintiff's mother told her (sometime in the early-mid 1980's) that she and Plaintiff's dad would be attending a party in honor of Defendant Corbett's 25th anniversary as a priest, Plaintiff was filled with rage and told her about the abuse at that time. Plaintiff also told her sister at which time she told Plaintiff that he had assaulted her as well! Immediately after those conversations Plaintiff told her husband her story. That was the first time Plaintiff had told anyone.

13. Since that time, Plaintiff's sister and her have talked about the abuse a number of times. The trauma of his abuse still causes Plaintiff anxiety, and anger - even at 59 years of age!

14. Plaintiff never reported Defendant Corbett to the Diocese of Rochester because she did not think they would do anything about it. Plaintiff had seen priests in her high school (Bishop Grimes) and at her new church (Immaculate Conception in Fayetteville) still

practicing and being moved after accusations of sexual assault and abuse to different places – such as Fr. Leo Heitzman - about whom many rumors had circulated for years among Plaintiff's friends and her brothers.

15. Defendant Corbett committed the sexual abuse and assaults against Plaintiff Oppedisano in the following places as described in her own words:

a). **The Stairwell:**

“Across the road from the church and school was a building that housed the gym upstairs and some classrooms and offices downstairs. The stairwell within that building had cement steps and iron railings. This landing was the site of his first assault of me. He pushed me up against the corner of that landing and had me trapped there. He touched my hair and began to touch my breasts.” During this encounter, I could see down the stairs over his shoulder and kept thinking “please, someone, come up the stairs so he will let me go”. There was some noise in the stairwell suddenly and he turned around and left.

I told myself that it was not really happening or that somehow I was misinterpreting the situation or alternatively, that he was showing me appropriate affection and that somehow I was “special” to him. It seems so crazy now but I was a naive 12 year-old child from a large catholic family that believed that priests were god's stand-ins on earth and that their intentions were pure. I put total faith and trust in the church and its priests.

“Another time in that same stairwell, he cornered me again and this time got his hands up my shirt as he discussed my emerging breasts, telling me what he was doing should feel good. All I could think about was that I needed to get away from him. After a few minutes he let me go saying we should get back to whatever it was that was going on (I can't remember if it was youth group or basketball or something else).” These are the 2

encounters I remember most vividly but there were probably 2 or 3 more times that he assaulted me in that stairwell. Always, the same pattern – pushing me up against the wall, fondling me, and talking about my breasts and how I was growing and that some boy was going to be lucky to get all of me. He put his hands up my shirt and touch my genitals from outside of my pants. I lived in fear of these encounters and the powerlessness of not being able to get away and not wanting him to catch me there. But it was no use, there was always a reason he needed me – to go to the nursing home in his car, to sort through some papers, to discuss when an activity would begin, etc.”

b). **The Church Sacristy:**

“One of the volunteer jobs I did at the church was to clean the church after school. The church was extremely quiet and very dark because of the dark wood and lack of lighting and it smelled of incense. It felt spooky to be there all alone but I just concentrated on getting the work done and getting out of there.”

“I remember hearing a noise in the sacristy one particular Friday afternoon when I thought I was alone in the church. I was afraid it was him so I quickened my pace so I could finish before I had to see him – I was so scared of any encounter with him.”

“I finished dusting the altar railing (the last job) and went to put everything away in the sacristy and there he was just standing there. He asked me to come over to him. I was so nervous that he would trap me again but I did go over to where he was. He then put his arm around me in a fatherly way. He did not touch me inappropriately at that time but said something like he was proud of my hard work and dedication to the church, to him and the other “father”, and that he knew he could count on me because I was a good girl and I loved the church. Although he was not saying it, I understood that he was telling



me not to say anything about his abuse of me.”

c). **The Rectory:**

“At Saint Mary’s, there was a covered walkway that led from the rectory into the church. I can’t remember why I was standing in that walkway, but I remember being with someone else (one of my brothers maybe?) and seeing Corbett in the window. I had never been in the rectory before so I did not know in what room that window was. He waved jovially to us and motioned for me to come in. When I entered, I went up the 5 or 6 steps around the corner. He met me at the top which was outside of his office where that window was.”

“After saying “come in and see my office”, he led me inside. The office had beautiful dark, wood paneling (I remember this because my parents were just paneling rooms in our house but this paneling looked so different from the cheap sheet my parents were using) and large bookcases that framed his desk. Upon entering his office, he shut the door and began to show me the pictures of his trips, his statues, his books and the gifts people had given him. At the end of one of the bookcases he put his hand on my shoulder and turned me around to face him as he pushed me up against the adjoining wall. Here he continued the same pattern of fondling me and asking about my breasts and my bra and whether it was new and could he see it? I did not say anything and he lifted my shirt and continued to fondle me. I still remember what I was wearing, the tan sweater top and “training” bra from Sears. After what felt like an eternity but was probably only a few minutes he pushed me harder against the wall and then let me go. As I left, he said he hoped I would come back and visit him in his office again soon.”

16. All of these experiences left Plaintiff Oppedisano feeling powerless and afraid.

17. Plaintiff Oppedisano remembers Defendant Corbett coming to her house for dinner or to visit her parents or one time taking her sister and Plaintiff to volunteer at a nursing home in his car and wanting to act as normal as possible all the while feeling like Plaintiff was going to throw up, just wondering when it might happen again.

18. Plaintiff Oppedisano had many years of therapy and has dealt with the child abuse and assault many times in therapy sessions but continued to experience fear and anger over the sexual abuse at the hands of Defendant Corbett.

19. Plaintiff has been and is being treated for depression because of Defendant Corbett's inappropriate and criminal conduct. The sexual abuse/assault has left Plaintiff feeling ashamed, afraid, without confidence, and distrustful of men. The Defendants have taken something from the Plaintiff that is irreplaceable. They took her innocence, her belief in the Roman Catholic Church and its leaders (her "faith") and even set Plaintiff up for other abuse over the years because she was so powerless and voiceless.

20. That stairwell still haunts Plaintiff. Plaintiff remembers the way that it looked – the cement, the iron railing; the way that is smelled and the feeling of being "imprisoned" by Defendant Corbett. Anytime Plaintiff would go down the back stairs in a hotel, hospital, or other large building Plaintiff the fear of being trapped, imprisoned and utterly powerless comes back to her and Plaintiff pictures Defendant Corbett there. The smell of incense makes Plaintiff gag and brings her fear. Often when Plaintiff goes into a catholic church and it smells the same or has the same kind of paneling or the same dim lighting - whether for a wedding or a funeral or a

baptism - those feelings coming back to Plaintiff of being trapped in the stairway or rectory with Defendant Corbett.

21. Plaintiff becomes enraged when knowing that Defendant Catholic Church moved known sexual predators from parish to parish in the Roman Catholic Diocese of Rochester enabling them to harm more and more children!

Plaintiff, Kathleen Israel facts:

22. The paragraphs that follow are Plaintiff Kathleen Israel narrative of the events that happened between 1972-1973 when Plaintiff was 11 and 12 years old and attending St. Mary's parish and St. Mary's Catholic school in Elmira, New York:

23. Though Plaintiff recalls a pervasive fear of Defendant Corbett and of being alone with him, Plaintiff was never touched by him until a St. Mary's parish picnic that took place in 1972. With Plaintiff's family present at a picnic table, Defendant Corbett asked me to help him retrieve water balloons from a nearby enclosure. As Plaintiff reached down to get the balloons out of a galvanized wash tub, Plaintiff was suddenly and shockingly aware that his left hand had found its way inside of her sleeveless shirt and bra and was cupping her breast and touching her nipple.

24. Plaintiff could not believe that this was happening After all, she was taught that as a priest, he was closer to God than she and should be trusted and respected. Defendant Corbett left the enclosure quickly, laughing and joking and broke a water balloon on her back in front of my family as if to say, "Aren't we having fun?" Plaintiff recalled her mother then remarking that Defendant Corbett was "so crazy and great with the kids." Defendant Corbett sexually assaulted the Plaintiff.

25. The second incident was only a scare, but equally traumatizing. Plaintiff was leaving the school yard on her bike when Defendant Corbett stopped in front of her, grabbed the handle bars and refused to let her move. Although he eventually let go of her, Plaintiff still feels ill today remembering that terror, of beings trapped by someone stronger, more powerful and more highly respected than herself.

26. The third encounter happened some months later when our folk group which Plaintiff sang in along with my sister, Donna Oppedisano and their parents needed music from an office downstairs in the Annex Building at St. Mary's. Plaintiff's dad asked her to go downstairs to get the music from an office that Plaintiff knew that Defendant Corbett was in. Plaintiff did as she was told, but dreaded going down those back stairs, worried about what would happen in that office. Defendant Corbett got up from his desk when he saw her, showed her where the music was in the back of the room and then blocked my exit. Plaintiff was terrified! At some point a minute or two later Defendant Corbett allowed her to sneak past him.

27. Plaintiff's parents were friendly with Defendant Corbett, inviting him to our house on several occasions to play bumper pool with my Dad. Plaintiff hid in the safety of her bedroom when he was present.

28. The incidents with Defendant Corbett primed Plaintiff Israel for future abuse adopting a "don't tell" attitude, at the hands of two other abusers by the time I was 17. Plaintiff recalled wanting to ask a friend if these things happen to her, wondering if maybe this was normal. Plaintiff never had the courage to speak to that friend, my sister (Plaintiff Oppedisano) or anyone else until Plaintiff married in 1983 and struggled with these abuse issues for many, many years, having sought counseling on many occasions in an attempt to overcome the trauma

and the depression that Defendants and Defendant Corbett caused. Plaintiff's parents were not made aware any of these incidents until she was already an adult with children of her own whom she has overprotected over the years to spare them from any similar trauma.

**AS FOR PLAINTIFFS' FIRST CAUSE OF ACTION**

**NEGLIGENCE, GROSS NEGLIGENCE, AND NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS BY DEFENDANTS AND DEFENDANT CORBETT**

29. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 28 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

30. Defendants, jointly and severally, negligently and gross negligently, recklessly and carelessly caused injuries, negligent infliction of emotional distress and damaged the Plaintiffs. The acts and conduct of the Defendants was the direct proximate cause of injury and damage to the Plaintiffs in violation of their statutory and common law rights as guaranteed by the Laws and Constitution of the State of New York.

31. As a result of the foregoing, Plaintiffs suffered specific pain and suffering, psychological and emotional injury, costs and expenses, was otherwise damaged and injured.

**AS FOR PLAINTIFFS' SECOND CAUSE OF ACTION**

**NEGLIGENCE PER SE, GROSS NEGLIGENCE PER SE, AND NEGLIGENT INFLICTION  
OF EMOTIONAL DISTRESS PER SE BY DEFENDANTS AND DEFENDANT CORBETT**

32. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 31 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

33. Defendants, jointly and severally, negligently per se and gross negligently per se, recklessly and carelessly caused injuries, negligent infliction of emotional distress per se and damaged the Plaintiffs. The acts and conduct of the Defendants was the direct proximate

cause of injury and damage to the Plaintiffs in violation of their statutory and common law rights as guaranteed by the Laws and Constitution of the State of New York.

34. The Defendants and Defendant Corbett violated the New York State Penal Law by their sexual assault and abuse of the Plaintiffs and its continuation.

35. As a result of the foregoing, Plaintiffs suffered specific pain and suffering, psychological and emotional injury, costs and expenses, was otherwise damaged and injured.

**AS FOR PLAINTIFFS' THIRD CAUSE OF ACTION**

**UNLAWFUL IMPRISONMENT OF THE PLAINTIFFS**

36. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 35 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

37. Defendant Corbett wrongfully, unlawfully, maliciously imprisoned and confined the Plaintiff Oppedisano to a stairway and his office on several occasions so that he could sexual assault the Plaintiff when she was between the ages of 12 and 13 years old.

38. Plaintiff Oppedisano was a child and was overpowered by Defendant Corbett who was a male Roman Catholic Priest and an adult. Defendant Corbett compelled her to remain and falsely imprisoned her in the stairway and in Defendant's office unlawfully to commit the criminal act of sexual assault against a minor.

39. By reason of Defendant Corbett's actions, Plaintiff Oppedisano was deprived of her liberty.

40. Plaintiff Israel was also unlawfully imprisoned in an enclosure at a parish picnic and also in Defendant Corbett's office when she went to retrieve water balloons and sheet music for her folk music group. By reason of Defendant Corbett's actions, Plaintiff Israel was deprived of her liberty.

41. Defendant Corbett compelled her to remain and falsely imprisoned her in the enclosure at the parish picnic and also in his office unlawfully to commit the criminal act of sexual assault against a minor.

42. Plaintiffs were subjected to great humiliation and mental and physical distress because of Defendant Corbett's sexual assault.

**AS FOR PLAINTIFFS' FOURTH CAUSE OF ACTION**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

43. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 42 of Plaintiffs' Verified Complaint, as if fully set forth here at length

44. Defendants maliciously embarked on a course of conduct intended to cause and did cause Plaintiff to suffer mental and emotional distress, tension and anxiety because the Defendants and Defendant Corbett failed to provide for the health, comfort, safety and welfare of the Plaintiffs.

45. As a result of the Defendants' conduct, Plaintiffs have become nervous, depressed, suffered great mental anguish, anxiety and other psychological and physical injuries.

**AS FOR PLAINTIFFS' FIFTH CAUSE OF ACTION**

**ASSAULT AND BATTERY**

46. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained

in paragraphs 1 through 45 of Plaintiffs' Verified Complaint, as if fully set forth here at length

47. Defendant Corbett maliciously embarked on a course of conduct intended to cause and did cause Plaintiff to suffer mental and emotional distress, tension and anxiety because the Defendants and Defendant Corbett failed to provide for the health, comfort, safety and welfare of the Plaintiffs.

48. On numerous occasions, Defendant Corbett did assault and battery the Plaintiffs as more specifically described within the fact portion of the complaint.

49. As a result of the Defendant Corbett's assault and battery against the Plaintiffs, Plaintiffs have become nervous, depressed, suffered great mental anguish, anxiety and other psychological injuries.

**AS FOR PLAINTIFFS' SIXTH CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTY**

50. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 49 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

51. While Defendant Corbett was under Defendants' employ, command, supervision, direction, and control, Plaintiffs, as parishioners, trusted the Clergy and other of Defendants' members, officers, employees, agents and representatives who sexually abused them to provide them with sound spiritual guidance and act in Plaintiffs' best interests. Defendant Corbett and Defendants' members, officers, employees, agents and representatives who sexually abused Plaintiffs were in positions of power and influence over Plaintiffs. Such personal and moral relationships between Plaintiffs, on the one hand, and Defendant Corbett and Defendants, on the



other hand, were confidential, special, and fiduciary relationships, pursuant to which Defendant Corbett and Defendants had a duty to, *inter alia*, guide, lead, and protect Plaintiffs —not allow them to be sexually abused by Defendant Corbett, conceal Defendant Corbett’s wrongful conduct when discovered, move the abusive Defendant Corbett from parish to parish, without warning church members or the general public, thereby further facilitating their predatory practices, refuse to report the abusive Defendant Corbett to law enforcement or other responsible authorities as required by law, and even promote the abusive Defendant Corbett. Plaintiffs expected and, in fact, trusted Defendants and Defendant Corbett to engage in lawful and appropriate relationships with them and, in fact, Defendants and Defendant Corbett were well-aware of Plaintiffs’ expectations of trust and confidence that Defendants and Defendant Corbett would do so.

52. As fiduciaries, Defendants and Defendant Corbett owed Plaintiffs (I) the commitment to deal fairly and honestly, (ii) the duties of good faith and undivided loyalty, and (iii) integrity of the strictest kind. Defendants and Defendant Corbett were obligated to exercise the highest degree of care in carrying out their above-described obligations to Plaintiffs as spiritual leaders and confidants under the Parties’ confidential, special, and fiduciary relationships.

53. Defendants and Defendant Corbett, however, breached their fiduciary duty to Plaintiffs and Class Members by, *inter alia*, (I) intentionally, knowingly, and/or recklessly instigating and engaging in, facilitating, and/or allowing the inappropriate, unauthorized, forced, unjustified, and sexual assault/abuse of Plaintiffs, when they were minors and without their

consent, (ii) intentionally failing and refusing to report such wrongful child sexual abuse to law enforcement or other responsible authorities as required by law, and (iii) intentionally and actively instigating, perpetrating, and participating in multiple schemes to cover up such wrongful child sexual abuse. In breaching their duties to Plaintiffs, Defendants and Defendant Corbett acted intentionally, wantonly, recklessly, and with a complete disregard for Plaintiffs' rights and interests, and the consequences of their actions.

54. As a direct and proximate result of Defendants' and Defendant Corbett above described wrongful conduct, Plaintiffs have suffered (and will continue to suffer) physical and/or mental injury, pain, suffering, and other actual and consequential injury, harm, compensatory, and economic damages. Defendants' (and Defendant Corbett's) above-described wrongful and abusive conduct—while Defendant Corbett was under Defendants' employ, command, supervision, direction, and control—constitutes breach of fiduciary duty at common law, both directly and under the doctrine of *respondeat superior*, agency theory, and/or the command responsibility .

#### **AS FOR PLAINTIFFS' SEVENTH CAUSE OF ACTION**

##### **PUBLIC NUISANCE**

55. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 54 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

56. By their above-described wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence, Defendants have taken (and continue to take) affirmative actions to facilitate the sexual abuse of children by Defendant Corbett and conspire to engage, and engage, in ongoing efforts to, *inter alia*, (I) conceal from the general public the child sexual abuse committed by Defendant Corbett, the identities of the abusive clergy, and the predatory tendencies of the abusive Clergy, (ii) attack the credibility of the victims of the Clergy's sexual abuse, (iii) protect the abusive Clergy from criminal prosecution for their sexual abuse of children by concealing their wrongful conduct and engaging in a conspiracy of silence, (iv) moving abusive Clergy from parish to parish, without warning church members or the general public, thereby further facilitating their predatory practices, (v) failing and refusing to report the abusive Clergy to law enforcement or other responsible authorities as required by law (and even promoting the abusive Clergy), and (vi) making affirmative misrepresentations to current or future employers regarding the abusive Clergy's fitness for employment in positions that include working with children—while failing to disclose information regarding the sexual misconduct by such predators.

57. The abusive Defendant Corbett's predatory tendencies coupled with Defendants' facilitation, deception, and concealment of such abuse was (and continues to be) an unreasonable interference with the general public's common right to the comfortable enjoyment of life because children cannot be left unsupervised in any location where abusive Clergy are present. The general public cannot trust the abusive Defendant Corbett and/or the decision makers of the Roman Catholic Church. The general public also cannot trust Defendants to, *inter alia*, (I)

prohibit and prevent abusive Clergy from supervising, caring for, or having any contact with children, (ii) warn parents of the presence of abusive Clergy, (iii) identify abusive Clergy so as to protect children in the neighborhoods where the abusive Clergy work and live, and (iv) report the abusive Clergy to law enforcement or other responsible authorities as required by law, so they will be criminally prosecuted and identified to the general public as registered sex offenders. Defendants' secretive conduct also interferes with and causes harm to the general public's right to know that Defendants have concealed (and continue to conceal) decades of sexual abuse by Roman Catholic Clergy, inclusive of Defendant Corbett.

58. Defendants' wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence regarding the sexual misconduct of abusive Clergy has caused (and will continue to cause) injury to the general public and seriously imperil children where Defendants have protected and concealed their predatory Clergy from criminal prosecution and registration as sex offenders in situations where the abusive Clergy voluntarily left Defendants' employ and/or where Defendants expelled such Clergy from the Catholic Church and disavowed any responsibility for the abusive Clergy's wrongful conduct even though Defendants shielded them. As a result of Defendants' above-described wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence, when Defendants' former abusive Clergy have sought employment in positions of trust with children, Defendants are the only ones aware of the risk posed by the former abusive Clergy, and potential employers, childcare custodians, and parents have no means of identifying the risk to their children posed by

former Clergy who should be convicted of child sexual abuse and registered as sex offenders.

59. Defendants' above-described wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence has endangered the welfare of children by placing them in harm's way, interfered with the interests of the community, and caused damage to the general public—and continues to do so. Defendants' wrongful conduct also has interfered with public health and safety by victimizing thousands of minor children and causing them severe harm and trauma, both physically and emotionally, as well as severe harm and trauma to their family members and friends—and continues to do so. Defendants' wrongful conduct also has interfered with the public morals by breaching the trust of Catholic Church parishioners and community members and holding themselves up as paragons of virtue and spiritual purity while simultaneously concealing and facilitating the criminal acts of its Clergy priests, specifically Defendant Corbett—and continues to do so.

60. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence, Defendants have created a public nuisance whereby Plaintiffs were placed in the custody, care, and control of abusive Clergy and suffered (and will continue to suffer) physical and/or mental injury, pain, suffering, and other actual and consequential injury, harm, compensatory, and economic damages.

61. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, omissions, cover-up, deception, and concealment, obstructive behavior regarding investigations, and conspiracy of silence, Defendants have created a public nuisance

whereby children in the general public were (and are) unknowingly placed in the custody, care, and control of abusive Clergy, unaware of the ongoing danger and at a much higher risk than other children for being sexually abused (and, perhaps, sexually abused by such Clergy).

62. The ongoing and continuing public nuisance created by Defendants was, and continues to be, the proximate cause of the above-described injuries and harm to the general public and the above-described special injuries suffered (and continuing to be suffered) by Plaintiffs. Defendants' above-described wrongful conduct constitutes the tort of public nuisance at common law.

**AS FOR PLAINTIFFS' EIGHTH CAUSE OF ACTION**

**CONSPIRACY**

63. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 62 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

64. Defendants, Defendant Corbett, and possibly others, either working together as a combined group or in sub-combinations of two or more, affirmatively conspired to engage in the wrongful actions set forth above. Defendants conspired to commit the wrongful actions outlined in Counts I-VII, above, all of which directly and proximately caused Plaintiffs to suffer (and continue to suffer) physical and/or mental injury, pain, suffering, and other actual and consequential injury, harm, compensatory, and economic damages. Defendants' above-described wrongful conduct constitutes conspiracy at common law and also qualifies as a Conspiracy pursuant to the New York State Penal Law.

**AS FOR PLAINTIFFS' NINTH CAUSE OF ACTION****AIDING AND ABETTING**

(ASSISTING, ENCOURAGING, PARTICIPATING AND/OR CONCERT OF ACTION)

65. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 64 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

66. By failing to, *inter alia*, (i) safeguard and protect Plaintiffs from Defendant Corbett, a sexual predator, (ii) discipline known offenders (rather than harboring them, protecting them, and moving them from parish to parish and covering up and further facilitating their abhorrent behavior), (iii) report sexual predator Defendant Corbett to law enforcement or other responsible authorities as required by law, (iv) institute policies of transparency, disclosing in the public record the names of all known Clergy with plausible allegations of sexual misconduct against, releasing all corresponding documents and information, and terminating and expelling such offenders from Defendants' employ, (v) publicly admit their wrongdoing, (vi) personally apologize to Plaintiffs, and (vii) institute comprehensive protocols and procedures to compensate victims and protect children and their families from abusive Clergy going forward, Defendants have aided, abetted, assisted, facilitated, encouraged, participated in, and engaged in a concert of action with Defendant Corbett (and possibly others) to commit child sexual abuse, cover it up, wrongfully protect the abusive Clergy, wrongfully protect the reputations, commercial activities, and financial interests of Defendants and the Catholic Church in the United States, and in the process, inflict severe physical and/or mental injury, pain, suffering, and other actual and consequential injury, harm, compensatory, and economic damages on

Plaintiffs and put the general public in danger—and continue to do so.

67. As a direct and proximate result of Defendants' (and Defendant Corbett's) above described wrongful conduct, Plaintiffs have suffered (and will continue to suffer) physical and/or mental injury, pain, suffering, and other actual and consequential injury, harm, and economic damages. Defendants' above-described wrongful conduct constitutes aiding and abetting under common law.

**AS FOR PLAINTIFFS' TENTH CAUSE OF ACTION**

**RESPONDEAT SUPERIOR LIABILITY**

68. Plaintiffs hereby repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 67 of Plaintiffs' Verified Complaint, as if fully set forth here at length.

69. By their conduct, Defendant, Roman Catholic Diocese of Rochester has respondeat superior liability for the state violations and this Defendant is negligent in its hiring, screening, retention, supervision and training of Defendant, Thomas Corbett, who violated Plaintiffs by the commission of negligence, gross negligence, recklessness and carelessness, assault and battery, sexual assault and abuse, false imprisonment, conspiracy to commit child sexual assault, intimidation, aiding and abetting, intentional infliction of emotional distress, and negligent intentional infliction emotional distress of the Plaintiffs.



**WHEREFORE**, the Plaintiffs request judgment against the Defendants for compensatory and punitive damages in an amount consistent with the jurisdictional requirements of this Court, and for such other and further relief as the Court deems just and proper.

Dated: August 23, 2019

JARROD W. SMITH, ESQ., P.L.L.C.

*JW Smith*

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